

**CIVIL SOCIETY, FREEDOM OF THE PRESS, AND DEMOCRACY IN IRAQ
SINCE 2003**

By

FARSAT MAMIL NASIR

THESIS

Submitted to
KDI School of Public Policy and Management
in partial fulfillment of the requirements
for the degree of

MASTER OF PUBLIC POLICY

2012

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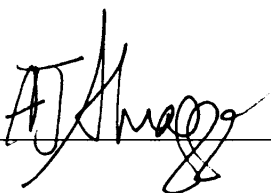
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Committee in charge

Professor Abraham Shragge, Supervisor



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ABSTRACT

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By

Farsat Mamil Nasir

In 2003 Iraq found a basic change in its ruling system with the collapse of the previous regime, but this change did not become a factor for political, social, and economic development in the country. The Iraqi government did not succeed in strengthening the principles of democracy to guarantee and secure the rights of citizens. Despite this, the media outlets and civil society organizations came in to the country and their number increased, but they could not contribute in the development process of democracy because they faced restrictions and difficulties. The freedom of expression and the press which are strong factors of democracy have remained undermined and restricted. The journalists in Iraq face killing and intimidation and their lives are not secure. The rule of law which is significant to maintain justice and equality is very weak or absent because of political parties interference in the courts and a biased judicial system. Therefore, the journalists who accompany civil society organizations are not able to check and monitor the government's policy and reveal corruption by officials. As a result, the continuation of political instability and conflict between Iraqi political parties which is the main reason for the weakness of the rule of law has had a negative effect on the condition of the freedom of press, civil society and the growth of democracy.

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2012 (year of publication)

DEDICATION

This study is dedicated to my wife Bakhan, my children Tolaz and Lewa,
and my parents

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With pleasure, I would like to express my gratitude to many people whom have shared to the completion of this thesis; without their support and encouragement it would have been difficult to reach the final step of this study. First and foremost, my special thanks to Professor Shragge, Abraham Joseph, my thesis supervisor, who always was available to guide me. His support and advice from the very beginning to the end enabled me to make progress in the study. I owe him for his commitment and encouragement to my work. My great thanks also to Professor Kim,Taejong for his valuable comments and advice, I strongly appreciate his help.

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I must express my wonderful gratitude to my parents who put me on the right way of life and showed me where I can find a successful future. Thanks also to my brothers and sisters for their help and support. Thanks to my both lovable children, Tolaz and Lewa, their unforgettable waiting for a year was a great contribution to the completion of my study. Last but not least, my unique thanks to my wife, Bakhan, for her understanding, courage, tolerance, and patience. Without her encouragement it was hard to make this achievement.

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CHAPTER ONE

1.0 INTRODUCTION

1.1 The Statement of problem

Civil society can play a crucial role in creating a democratic state because civil society confirms the existence of social sectors such as family, voluntary associations, and pressure groups which are independent or autonomous from the state while still necessary for democracy. Within civil society, the activities and objectives of groups will converge as they try to preserve and defend their interests. Also, civil society is an arena of non-compulsory collective actions among the groups in which objectives and values can be shared. Civil society consists of groups which are different from the state institutions, such as charity organizations, social movements, and self-help groups. In addition, NGOs are considered as civil society groups in that they are generally not-for-profit organizations and committed to actions securing the public interest.

Classical philosophers like Georg Hegel and Karl Marx believed that civil society is “society minus the state,” which is mostly about the economy. In Hegel’s perspective, civil society is a space of contradictions which can be resolved only in the higher institutions of the state. But Marx believed that civil society is a sphere of conflict between private interests, and the state cannot reconcile them. Such conflicts will turn to class struggle in which the state will ultimately be overthrown. Unlike the above-mentioned ideas, Antonio Gramsci thought that civil society includes the group of institutions in which society can organize itself autonomously from the state.¹

¹ Martin Shaw, Civil Society.
<http://www.sussex.ac.uk/Users/hafa3/cs.htm>

In the political arena, civil society groups can act effectively side by side with government in political issues and influence the outcomes, because they represent the interests of different views in the society. Therefore, in the existence of a democratic society, civil society groups should have the right to build relationships with the state and the political parties but without being under their control and power.

Before 2003, Iraq was under an autocratic system in which civil society was totally suppressed by the state. The civil society organizations, such as women's organizations, political parties and other civic groups were monopolized and prohibited under the restrictive regulations of the previous Iraqi ruling system.²² Toby Dodge writes about the powerlessness of civil society in Iraq under the Baath Party and believes that it was difficult even to talk about civil society in Iraq. At that time the social groups were dominated by the state.³ Under dictatorship, civil society is weak because one of the main tasks of civil society is to monitor the government's policy. Therefore, under the Baath Party regime, those who resisted the regime or complained against its policy faced imprisonment and torture. Thus, many of the journalists and media people fled the country because they were charged with crimes and sentenced to prison.

In 2003, Iraq was invaded by the U.S. and its allies but "the official reason was the threat of Saddam Hussein's alleged programmes of weapons of mass destruction (WMD) and the possibility he would pass along those arms to al Qaeda"⁴ (Jim Lobe, 2008).

² Melek Saral, Civil Society and Human Protection in Iraq since 2003, 13.
<http://shur.luiss.it/files/2009/05/saral.pdf>.

³ Ibid.

⁴ Jim Lobe, why did U.S. invade Iraq? 18 March 2008.
<http://ipsnews.net/news.asp?idnews=41643>.

However, even years after the invasion UN inspectors searching for WMD could not find justification for the Bush administration's occupation of Iraq. But liberating Iraq from an aggressive oppressor of the Iraqi people could be a good justification for the invasion. Along with that, the terrorist attacks of 9/11 were catastrophic events that motivated the U.S. to take action against the risk of terrorism. Thus, "the removing of Saddam Hussein became an essential part of global strategy in the war on terrorism," because the U.S. regarded Iraq as a haven for terrorism through the dictatorship's systematic support for terrorists. Therefore, the U.S. believed that future attacks could not be prevented by simply targeting al- Qaeda if the Iraqi government stayed as a source of their support.⁵ As a result, replacing Saddam Hussein's regime with the democratic system was a good choice of U.S. to establish a free and democratic Iraq far from oppression and intimidation of previous regime.

However, after Iraq was transformed from an autocratic state to a democratic state in 2003, it became the arena of events such as daily explosions, killings, assassinations and more. The internal security situation deteriorated and generally people faced a difficult condition of life. Daily tens of civilians were became the target of terrorism actions and died. Sectarian violence took place between ethnic groups and split the society which led to the breakdown of the rule of law and displacement of 2.7 million Iraqi citizens within the country. Besides, nearly 2 million people were evacuated to the neighboring countries, such as Jordan, Qatar, the Emirates, and Syria. This situation made Iraq the second largest refugee country worldwide after Afghanistan.⁶

⁵ John Hawkins, why we invaded Iraq?
<http://www.rightwingnews.com/john/whyiraq.php>.

⁶ International Relief and Development, Displaced Iraq and Refugees: A Growing Crisis.
http://www.ird.org/how/PDFs/Iraq%20refugees%20policy%20brief_final.pdf.

As day after day problems increased and people felt dismayed and frustrated, Iraq's instability and continuous agitation attracted reporters and journalists from around the world because of such events. The journalists and reporters in Iraq have faced continuous difficulties in freely practicing their profession because even under the new government they still face threats, oppression, degradation and more. This situation has undermined the significance of civil society in promoting and stabilizing democracy, because to form a democratic society, it is important to have independent and free media, and there also should be laws to protect them from any violation of their freedom to do their work.

However, in Iraq, there is the "Syndicate of Journalists"⁷ which created the journalist's law of protection known as the Draft Law, but it does not comply with the provisions of the International Covenant on Civil and Political Rights (ICCPR), that Iraq ratified on 25 January 2005. The Draft Law incorporates the criminal defamation law of the "Iraqi Penal Code law"⁸ of the Baath Party, dated 1969 for protecting the "reputation and privacy" of public officials, groups, states symbols, and government policy in Iraq. This provision, according to the ARTICLE 19 Organization, is illegitimate because reputation and privacy should be protected through civil law as "the special Rapporteurs on freedom of expression of the United Nations, the Organization for Security and Cooperation in Europe and the

⁷ The Iraqi Syndicate of Journalist: was founded and adopted by the Iraqi government in 23 June, 1959 to guarantee the freedom of journalism and protect the rights of journalists. The Syndicate in 2009 drafted a journalist's law of protection which was adopted by the Iraqi government in August 2011.

⁸ Iraqi Penal Code: in 1969 was adopted by Iraqi government as law of Iraq and currently is the statutory law of Iraq and serves as basis for Iraqi law, its last amendment was in 2009, The Iraqi Penal Code includes a criminal defamation law which punishes those who defame the state, officials and symbols of the state.

Organization of American States have called on States to repeal all criminal defamation laws in favor of civil law.”⁹

The ARTICLE 19 Organization recommends repeal of the Iraqi draft law on freedom of expression or to replace all criminal defamation laws and provisions as they exist in the Iraqi Penal Code, because it includes restrictions on insulting public officials and authority which the law regards as criminal defamation. The purpose is to place defamation within civil law in order to provide protection to reputations and privacy. Thus, ARTICLE 19 Organization is concerned regarding the weaknesses of provisions in the draft law because on the one hand the provisions are incompatible with the standards of international law for human rights.¹⁰ On the other hand, the draft law will not guarantee the safety or freedom of the press and the protection of journalists. Therefore, freedom of the press faces two problems. The fragile law and the government itself both need to be examined because in civil society, the freedom of the press is an important element to manage the country’s journey towards democracy.

A free press as part of civil society has a critical role in promoting democracy which needs free access to information, because it will disseminate news and information among the population. The citizens will be aware of how the government is carrying out the wishes of those who elected them. A free press will be helpful in directing the citizens to participate in the political decision-making process. In democratic societies, freedom of the press is better protected through the rule of law, but in Iraq, freedom of the press is not secured, which is essential, because Iraq has newly emerged to welcome democracy after many years of dictatorship. In Iraq, which moves from autocracy to democracy, civil society can play a role

⁹ ARTICLE 19, see <http://www.ARTICLE19.org/data/files/pdfs/analysis/iraq-media-report-exec-summ.pdf>.

¹⁰ Ibid.

in building democracy by enhancing the public's democratic skills as the nation moves towards democracy.

Ideally, civil society will force the government to minimize corruption and it will monitor the government's actions. Therefore, Iraq needs to enforce the rule of law and make reforms in provisions which are related to the protection of a free press and removing the barriers on access to information, which are essential to the press in order to guarantee a democratic state.

1.2 Purpose of the Study

As freedom of the press contributes to civil society and promotes democracy, this study aims to answer the following questions:

- 1- How have weak civil society and unsecured rights of journalists and a constrained rather than fully free press negatively affected the development of democracy in Iraq?
- 2- What is the nature of Iraqi law and society with regard to civil society, free press, and democratization?
- 3- What must be done to strengthen rule of law, freedom of expression, and democratic development?

To do so, the essay will show the imperfection of the Iraqi draft law for journalists' protection through setting limitations and restrictions on the free press, and the reaction of the ARTICLE 19 Organization to its Articles that it did not comply with international standards for human rights. Furthermore, it will focus on the reality of the rule of law in Iraq and how it could not provide justice and equality to protect the rights of all Iraqi citizens side by side with the journalists and the free press. To achieve this, we will use current reports of international organizations, articles and new views as the secondary resources and interviews

with journalists as a primary resource to analyze data to learn the condition of freedom of the press in Iraq, weakness of rule of the law and its effectiveness in democratic development.

1.3 Significance of the Study

Currently, democracy as a new experience in Iraq passes through a difficult situation of political instability, and the rule of law which is a main factor to secure the rights of the Iraqi citizens and journalists is weak. Therefore, freedom of the press which is known as “the fourth pillar of democracy”¹¹ contributes to creating civil society and fostering democracy, but still faces trouble. This study shows the weakness of the rule of law in Iraq because of the political parties’ interference in the judiciary system and how it affects freedom of the press and undermines its role in activating civil society and promotion of democracy. In addition, the study will criticize the current policy of the government and the limited principles that the Syndicate of Journalists is practicing towards the journalists, and it will discuss how the situation can improve in order to stabilize civil society and democracy through an independent rule of law.

1.4 Hypothesis

As civil society is important in building democratic life for any country, freedom of the press has a critical role in boosting civil society and achieving that goal. The institutions and organizations in civil society are main factors to shorten the gap between the government and society. Freedom of the press as an effective tool can perform this task in a free and

¹¹ Santo Domingo, Freedom of Press: Fourth Pillar of Democracy, August 13, 2010.
<http://santodomingo.usembassy.gov/pr-100813.html>.

independent environment outside of government's control. A free press spreads social, political, and economic information to people and encourage them to make decisions. In addition, a free press participates in establishing a framework for successful reform of governance by exposing corruption and it stands as a monitor to the officials and government's policy and action.

In Iraq after 2003 the scope of the media was expanded and the number of civil society organizations increased, but the unstable political and security situation has discouraged and undermined the effective role of the press to promote civil society and therefore democracy. Iraqi society is highly affected by sectarian and religious conflict which has damaged the society. A free media can create a common language of understanding to help reconciliation and coexistence. Iraq requires a free and independent media outlet to effectively contribute to developing democratization processes and this goal can be achieved through fair justice and an independent judiciary system which leads to the establishment of the rule of law. Still, in Iraq, because of political parties' interference the rule of law could not become independent and this has led to further injustice and inequality.

Currently, in the absence of reliable rule of law, Iraqi society is suffering from human violations and inequality along with the government which is affected by political instability, corruption, and improper ways of governing. The lack of rule of law in Iraq has also caused journalists to face intimidation, threats, and violence along with the other civilian people. Hence, Iraq in its current unstable situation requires a fully free, secure, and independent press to tie people with the government's policy and transfer their messages, needs, interests, desires, and petitions to the government. Besides, an independent press should also contribute in fostering the process of democratization and create a satisfactory environment for social tolerance, co-existence, and public reconciliation in Iraq.

1.5 Limitation of Scope

This study attempts to explain the connection between civil society, the rule of law and democratization, and how these issues affect and are/or affected by freedom of the press in Iraq as a result to the protection and safety of journalists. The achievement of increasing media outlets in Iraq after 2003 when Iraq changed from a dictatorship system to a democratic system was not highly considered by the government and despite that it was constrained. The essay will investigate the draft law covering journalist's protection which was prepared by the Iraqi Syndicate of Journalists and adopted by the government of Iraq in 2011 to protect the rights of freedom of press. The law is intended to support the journalists and secure their rights of access to information and protect them from trouble they might face during the course of their work. But the draft law was opposed by different opinions, for example those presented by the ARTICLE 19 Organization for developing freedom of the press which commented negatively on the draft law of created by the Syndicate of Journalists. Furthermore, the study will include the requirement of rule of the law in Iraq which in its absence the free press is in a weak position and is open to corruption and social violence, and this leads the country to not easily meet the goal of civil society and growing democracy.

CHAPTER TWO

2.0 Literature Review

The scope of the research will cover the incentives for improving the condition of civil society and freedom of the press in Iraq through the power of the rule of law which I hypothesized will foster democracy. However, the state should play a vital role with respect to stabilizing the rule of law as an instrument to pave the way for democracy. “The World Justice Project Index Rule of Law,” by Mark David Agrast, Juan Carlos Botero, and Alejandro Ponce (2011), can be regarded as a good road map for defining the rule of law, because it provides a solution for healthy governance and a healthy society where the rights and life of each individual will be protected and secured under the law. Thus, it manages to support the creation of a civic and democratic society that can contribute in strengthening the basics of democratization.

The World Justice Project Index constitutes nine factors taken from (WJP) universal principles and which compose important features of the rule of law. The first factor is “*Limited Government Power*” to measure the government’s accountability. This provision confirms that the power of the government and officials is limited and they are themselves subject to the law. It also mentions that a free and independent press is a watchdog on the government’s policy and actions. The second factor is “*Absence of Corruption*” through measures to prevent “*bribery and misappropriation of public funds or other resources*” to ensure that the government officials should not use public interest for their own private interest. The third factor is “*order and security*” which determines the safety of the society by controlling crimes and civil conflict. The fourth factor is “*fundamental rights*,” which details the protection of human rights and mentions that the freedom of opinion and thought as civic rights are essential in relationship with the rule of law. Moreover, the other factors such as

“open governance, effective regulatory enforcement, access to civil justice, effective criminal justice, and informal justice” are also measures of facilitation for stabling rule of law in society.¹²

The World Justice Project Index provides a good example of how to frame the rule of law which supports civil society with rights of promoting processes of democracy through participating in political affairs in the country. The application of this law will be fundamental in Iraq, because in Iraq the rule of law is weak and it leads the government in to crises of democracy.

Andrew Clayton, Peter Oakley, and Jon Taylor (2000) have written “Civil Society Organizations and Service Provisions.” They are arguing that after the fall of communism and the Soviet Union collapsed, democracy was welcomed by many European countries, even by African and Latin American countries. Especially, after the cold war, democracy became a popular ideology that was unchallengeable. The wave of democratization encouraged western countries to willingly resist corruption and conduct administrative and political reform. Moreover, those states were willing to step forward to a democratic environment through “freedom of the press, multi-party governing system and protecting human rights under the power of the rule of law.”¹³ Here, it can be realized that European countries in their initial step to democratization, considered the rule of law and freedom of the press as the basic structures to promote the process of democracy.

¹² Mark David Agrast, Juan Carlos Botero, and Alejandro Ponce “The world justice project” (2011): 10-13. http://worldjusticeproject.org/sites/default/files/wjproli2011_0.pdf.

¹³ Andrew Clayton, Peter Oakley, and Jon Taylor, “Civil Society Organizations and Service” provisions, (October, 2000), 2. <http://www.pogar.org/publications/other/unrisd/intrac.pdf>.

Khaled Kilani (2010) in his article “*The Media’s Role in Supporting Civil Society*,” argues that development and advancement of society is based on the three pillars of an “*Independent and impartial judiciary, Free and independent press, and Effective civil society*.”¹⁴ In order to have a strong and an effective civil society, there should be a free and independent press. The writer emphasizes that the journalists need civil society organizations that are working among people to feed them with the ideas and information about society and the problems of the people. He also mentions that both media and civil society cannot exercise their function if there is no free and independent judiciary system to protect them from unwarranted government intrusion.

Moreover, the journalists need the civil society organizations to help defend themselves against any abuse and threats from the power of the state. Under the light of Kilani’s view, it can be seen that an undermined civil society will negatively affect the function of the press in addressing issues. A free press will actively serve when there is a democratic environment which to create a strong civil society. Thus, in developing countries, the existence of a free press is important, because usually governments which are newly introduced to democracy are emerging with the social and political problems which can be clearly visible and shown through civil society’s role. The research will also rely on an ARTICLE 19 Organization Report which sets a roadmap for the Draft Journalist’s Protection Law of Iraq regarding the protection of journalists’ rights and the free press in Iraq. The ARTICLE 19 Organization in its 2011 report suggests that some provisions of the draft law be “omit[ed] or amend[ed]”¹⁵

¹⁴ Khaled Kilani, the media’s role in supporting civil society, civilized dialogue, October 2010. <http://www.ahewar.org/debat/show.art.asp?aid=232938>.

¹⁵ see: <http://www.ARTICLE19.org/data/files/pdfs/analysis/iraq-comment-on-draft-journalists-protection-law.pdf>.

especially those related to the profession of press in Iraq in which does not conform to the international standard's law on the rights of the free press.

The provisions which require reform restrict and limit the rights of the free press in Iraq. The ARTICLE 19 Organization also supports the claim of the research which finds the fragile and weakness of civil society and delay of developing democratization processes as a result of the absence of a free press in Iraq. The above- mentioned ideas are useful sources for the research that can be developed because they have the same goal of creating a democratic and modern society through a strong, fair judiciary system, the free and independent press and strong civil society, which this research also claims.

2.1 Background of the study

Iraq in its history had never created an active and capable civil society. However, long before the Baath party took over power in 1968, especially in the 1930s, civil society made some progress as some associations were formed such as a “vibrant press, labor union, and writer’s association.” Also, in 1952 the Iraqi Women’s League was founded to defend the rights of women and encourage them to participate in politics and struggle against their illiteracy.¹⁶

In addition, the media in Iraq were free to some extent in comparison to the other countries in the Middle East. But after the Baath Party came to power in 1968, media was constrained and it was mostly restricted when Saddam Hussein became the president of Iraq in 1979. (To completely control the media in Iraq, Uday Saddam Hussein in 1992 became the head of Iraqi

¹⁶ Civil society and Human Rights Protection in Iraq since 2003, June 2009: 12.
<http://shur.luiss.it/files/2009/05/saral.pdf>.

Journalist Union although he had not any experience in media).¹⁷ It led the limited existing press to be in service of an autocratic system and create a huge space between society and state.

The collapse of the Baath regime was a serious event for the emergence of civil society with a new model, that civil society is not subject to protect the interests of a mere group any more, but instead, is a powerful factor to contribute to the whole society, which should limit the authority of the state. Soon after 2003, with the political change in Iraq and massive access of International Non-Governmental Organizations to provide people with aid, numerous local civil society organizations in Iraq emerged.

According to the NGO Coordination Committee for Iraq (NCCI) report, after the US- led Iraq war, the registered number of civil society organizations was estimated to be between 8,000 to 12,000 organizations. But most of them had affiliations with political parties and some others were linked to religious and sectarian groups. This system of local civil society organizations has become popular in Iraq. But, most of them are not independent.¹⁸

As part of civil society, media channels have also increased side by side the other sectors of civil society, and become an essential part in the political and social life in Iraq. (After 2003, Iraqi media which was controlled completely by the former Baath regime was managed by two fronts: firstly, by the U.S. which gave priority to free press and spent half billion U.S dollars for media development, and secondly, by the Iraqi people who had been deprived of

¹⁷ Human Rights Watch, At a Crossroads, Human Rights in Iraq Eight Years after the US-Led Invasion, Feb, 2011), 6. <http://www.hrw.org/sites/default/files/reports/iraq0211W.pdf>.

¹⁸ Coordination Committee for Iraq, "Iraq's Civil Society in Perspective", April 2011 p: 16. http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_476.pdf.

freedom of expression for many years).¹⁹ Therefore, the Iraqi media did not represent only one particular system anymore and its number increased. “*Overnight, Iraq’s media landscape blossomed into one of one of the most diverse and unfettered press in the Middle East, privately owned outlets grew from zero to more than 200.*”²⁰

Soon after, Iraq’s imperfect political situation and internal ethnic conflict created a bloody environment for media and the free press. This situation led Iraq to be the most dangerous place for journalism according to the Human Rights Watch (HRW) report (2011). Iraq was considered “*the deadliest country in the world for journalists for six consecutive years, between 2003 and 2008.*”²¹ Also, the (HRW) report mentions that since 2003 more than 145 journalists in Iraq were killed and “at least 90 who were targeted for murder.”²²

The violence has declined since 2007 in comparison with the previous years, but still attacks on journalists by unidentified attackers persist. For example, Mu’aid al-Lami, head of the Iraqi Journalists’ Syndicate, representative of nearly 12,000 journalists, was rescued from two assassination attempts in two years, once on 20 September, 2008, when a car bomb exploded near his office and second, on 12 March, 2010, when an unknown man fired on his car and killed his driver.²³ Eventually, it can be seen that since 2003, the Iraqi freedom of the press has suffered crises of safety and protection. Journalists are still facing attacks and they are

¹⁹ Sherry Ricchiard, Iraq’s news media after Saddam: liberation, repression, and future prospects, report, (10 March, 2011), 4. http://cima.ned.org/sites/default/files/CIMA-Iraq_News_Media-Report_1.pdf

²⁰ Ibid.

²¹ Human Rights Watch, At a Crossroads, Human Rights in Iraq Eight Years after the US-Led Invasion, Feb, 2011), 32. <http://www.hrw.org/sites/default/files/reports/iraq0211W.pdf>.

²² Ibid, 32.

²³ Ibid, 34.

restricted from free access to information. Thus, according to the “Freedom House’s Annual Press Freedom Index” in 2011, Iraq ranked as a “not free” country because of such violations and restrictions set on the press in Iraq.²⁴

²⁴ Karin Deutsch Karleka, Freedom of the Press 2011, House’s Annual Press Freedom Index, 10. <http://www.freedomhouse.org/uploads/fop11/FOTP2011Booklet.pdf>.

CHAPTER THREE

3.0 Supportive institutions to the freedom of expression

ARTICLE 19 is an organization dedicated to human rights, located in London. It is an independent human rights organization that works around the world to protect and support the right to freedom of expression and freedom of information.²⁵ It took its name from Article 19 of the Universal Declaration of Human Rights (UDHR) which states, “*Everyone has the right to freedom of opinion and expression; the right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers.*”²⁶ The General Assembly of the United Nations approved the Universal Declaration of Human Rights as an independent document on 10 December 1948.

The Universal Declaration mentions the central rights and essential freedoms which apply to all human beings equally, and emphasizes that all individuals have inherent dignity which and should be protected through providing them with freedom, justice, and equality. The Universal Declaration includes also “civil and political rights, like the rights to life, liberty, speech and privacy.”²⁷ As the Universal Declaration for Human Rights became a good vehicle with which to defend against human rights violations internationally, so it was followed by many other international treaties to further concentrate on the protection of human rights, such as the International Covenant on Civil and Political Rights (ICCPR)

²⁵ ARTICLE19, Comment on Draft Journalist Protection Law of Iraq, (London, May 2011), 29. <http://www.article19.org/data/files/pdfs/reports/comment-on-draft-journalist-protection-law-of-iraq.pdf>.

²⁶ Universal Declaration of Human Rights, Article 19. See: <http://www.un.org/en/documents/udhr/#atop>.

²⁷ Australian Human Rights Commission, Human Rights, Universal Declaration of Human Rights 60th Anniversary, 2008, what is the Universal Declaration on Human Rights?. http://www.hreoc.gov.au/human_rights/UDHR/what_is_UDHR.html.

which was adopted by the General Assembly of the United Nations on 16 December 1966 and enforced on 23 March 1976.

In early 2002, the number of the states that ratified the (ICCPR) reached 147 states; Iraq ratified it on 25 January 1971.

The purpose of the (ICCPR) was to expand more “civil and political rights, and freedoms of human beings.” All states that ratified the ICCPR are obliged to be consistent with its Articles that represent civil and political rights of people.²⁸ Therefore, the ARTICLE 19 organization which supports the improvement of the freedom of expression tries to analyze the condition of freedom of expression worldwide. It makes recommendations on the proposals that are issued regarding the freedom of expression to comply with standards of international law for human rights. The Iraqi government adopted in August 2011 the Journalist’s Protection Law known as draft law which consisted of 16 Articles. The aim of the draft law was to secure journalists’ rights and protect the freedom of expression in Iraq. But ARTICLE 19 stated its concern about the imperfection of the articles of the draft law and commented on it, because ARTICLE 19 argued that the draft law did not meet (Article 19)²⁹ of the (ICCPR) which states that,

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

²⁸ Manual on Human Rights Education with Young People – Council of Europe, summary of ICCPR and ICESCR, The International Covenant on Civil and Political Rights (ICCPR). http://www.eycb.coe.int/compass/en/pdf/6_4.pdf.

²⁹ Office of the United Nations High Commissioner for Human Rights, International Covenant on Civil and political Rights, article 19. <http://www2.ohchr.org/english/law/ccpr.htm>.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals.

Both Articles 19 of the Universal Declaration for Human Rights UDHR and ICCPR have the same meaning regarding the protection of freedom of expression. UDHR was an incentive for emerging ICCPR international agreement for further supporting the protection freedom of expression and oblige the ratified countries to conform to its Article 19. However, Iraq in 2005 adopted a national constitution that includes the right of freedom of expression in (Article 38)³⁰ in the following terms:

The State shall guarantee in a way that does not violate public order and morality:

A. Freedom of expression using all means.

B. Freedom of press, printing, advertisement, media, and publication.

C. Freedom of assembly and peaceful demonstration and this shall be regulated by law.

And Article 39, II states, “*It is not permissible to force any person to join any party, society, or political entity, or force him to continue his membership in it.*”³¹ But ARTICLE 19 argued that the Iraqi draft law for journalists’ protection did not follow the articles of Iraqi constitution to secure rights of the freedom of expression and journalists. Therefore, ARTICLE 19 recommends the Iraqi government to change and/or omit some articles of the draft law to make improvement in the situation of the freedom of expression in Iraq.

³⁰ Iraqi Constitution, Articles 38 and 39 (II), Chapter two (liberties).
http://www.uniraq.org/documents/iraqi_constitution.pdf.

³¹ Ibid

3.1 Freedom of the press

The press is the profession that conducts the collection of news, and explains and analyzes it, and then publishes its findings among the community after its reliability is confirmed. Mostly, the news is about the latest political, social, cultural, and economic events which the journalist aims to inform the public. Freedom of the press should be unrestricted and not controlled either by the government or any party that may affect its practice of the profession and activities. Through a free press people will be aware of events happening in the world which will pave the way to their contribution to the political system. Moreover, the free press has a critical role in decreasing government's domination, corruption and incompetence.

In any country, either developed or undeveloped, freedom of the press will be undermined when it is threatened due to dangerous elements such as punishment of journalists for their opinion by the state, officials, or policy. The free press under pressure will not produce a transparent government; free and civic society calls for democracy. For many democratic countries, freedom of the press means the free choice of individuals to express their opinion in writing, speech, or any other way. The Universal Declaration of Human Rights in Article 19 states that all individuals have rights of free expression and opinion free from interference in order to be able to search for knowledge and information.³² Therefore, freedom of the press is not only a right of a specific group such as the journalists, but it extends to cover all citizens of the world because it is an inseparable part of public freedom and human rights.

The journalist through a free press should provide an opportunity to the reader to know about realistic news and get away from unreliable news that may lead the reader to confusion. A free press can motivate people to ask for governance reform to eliminate injustice, corruption

³² Universal Declaration of Human Rights, Article 19. See: <http://www.un.org/en/documents/udhr/index.shtml#a19>.

and bad performance of officials. It works as a watchdog and monitors the government's policy and actions to expose the weaknesses and shortcomings and make an impact on the political authority for more transparency and accountability. But even in some countries other than Iraq the press still is in bad condition, where it is dangerous to practice the profession of journalism and the rights of journalists are not secure. For example, North Korea is known as the most heavily restricted and controlled community and the most secluded people in the world, for five successive years ranked by *Reporters Without Borders* as not a free country and at the bottom of the scale worldwide for freedom of the press. RWB in 2005 report mentioned that the North Korean President Kim Jong-il controlled the North Korean media. The journalists were obliged to praise the president known as "Dear leader" and publish articles that represent the ideology of North Korean Socialism and condemn imperialism and bourgeois.³³ The report shows that the profession of journalism is terrible in North Korea, and to what extent the journalists were trained ideologically to defend the party's socialist ideology and focus on the President's speeches. The report stated that the journalists will be punished by sending them to "revolutionization"³⁴ camps for a simple mistake, such as an error in typing or misreporting.³⁵

However, the duty of the press is to monitor the government's policy and inform the public about events in the country and to perform this role it needs complete freedom. But in North

³³ Ashlee Male, No press freedom on North Korea, Article.
<http://www.roac.nl/roac/files/four%20freedoms%20awards/North%20Korea%20-%20Ashlee%20Male.pdf>.

³⁴ Revolutionization camps are state farms and factories where journalists are sent to work and become re-educated upon making mistakes. In more strict cases such as crime the journalists are sent to concentration camps.

³⁵ Ashlee Male, No press freedom on North Korea, Article.
<http://www.roac.nl/roac/files/four%20freedoms%20awards/North%20Korea%20-%20Ashlee%20Male.pdf>.

Korea the press is restricted and it put in the service of a dictatorship system which has narrowed the freedoms of people and deprived them from the right of expression, information, listening, and watching. The totalitarian system of North Korea did not encourage the civil society organization to contribute to public awareness and provide people with the social, health, and education aid and service. The government has restricted any incentive that supports the creation of civil society and promotion of democracy in the country.

3.2 Freedom of the press in Iraq

Following the Iraqi war in 2003 which collapsed the previous regime, Iraqi media engaged a dramatic change in which hundreds of media channels were founded. For the first time after 35 years of media monopolization, media in Iraq started to emerge from the complete control of the government. The mounting of media sectors such as newspaper, TV channels, websites, and more, was equivalent to the political change which brought with itself many different political parties and religious groups in to the arena of conflict in Iraq. It had not lasted a long time when Iraq became the sphere of terrorist actions and daily catastrophic killing of civilians and other disturbing and disgusting incidents. The security situation in Iraq was unstable, but the journalists tried to cover up their own problems and still publicize events, providing awareness among people about what was going on in the country. For this purpose, the local and foreign journalists were required to face challenges of killing, oppression and repression. According to the BRUSSELS TRIBUNAL Organization, from 2003 to 2011, the total number of journalists and reporters killed in Iraq reached 204.³⁶ However, the number was greatly reduced since 2007 from 37 to 11 in 2008 and to 4 in 2009, but still Iraq remains

³⁶ The BRUSSELS TRIBUNAL Organization, see:
<http://www.brussellstribunal.org/Journalists.htm>.

a dangerous place for journalists because of the continuous poor security situation. The journalists still practice their profession under risk. For example, in February 2009 a team from Al-Itijah satellite television was beaten when they rejected an order by Iraqi soldiers not to enter the southern city of Karbala. Also, checkpoint police attacked Majeed Imadedin in March 2009 when he was on the way to attend and cover a religious ceremony in Samara city. And the governor's security force shut down the local radio station of Dyala province in July, 2009 when the radio issued the complaint of people regarding the imperfection of government's policy.³⁷

These examples indicate that the journalists are facing problems in practicing their profession, and their rights are not protected and guaranteed, and a secure and free press in Iraq is in trouble because of such situations. The prevention of the free press will encourage the government and officials to engage corruption more widely. Because if there is no press watchdog on the government's performance, then there will be no obstacles in the way of misusing power and the nation's assets. Another problem of the press in Iraq is its division between those who are associated with government and political parties and the independent press. On the one hand, the non-independent press that is affiliated with the government and the political parties is not properly supportive of transparency and exposing the government's mistakes and bad performance.

Because this kind of non-independent press is funded by the government and the political parties they are expected to represent their ideas rather than criticize their policies. Also, to some extent they are misleading people by focusing and praising only the positive sides and neglecting or hiding the negative sides of the government's policy. This kind of the press could always survive because it receives complete financial support from either the

³⁷ Freedom House, freedom of the press 2010, (Iraq, October 2010).
<http://www.unhcr.org/refworld/country,,FREEHOU,,IRQ,,4ca5cc5f2,0.html>.

government or the political parties for managing their works and activities. On the other hand, an independent press tends to know what is going on in the government, monitors the government's policy system, shows the corruption, and pressures the government to take action. This kind of press has always faced financial problems because the government does not support it.

Ismail Zayer, editor (New Morning) states that independent newspapers are subject to losses because of having no financial source to fund them and it makes it difficult to continue. During 2003 there were nearly 160 newspapers but many of them were closed because of lack of funding. Therefore, sometimes they may be obliged to look for the external financial sources or quit their activities. Usually this happens because there is no national project to support a true and independent free press.³⁸

Because Iraq is a society deeply divided by religious sects, especially Shiiha and Sunni, this situation has also reflected the weakness of the free press. Each side has privatized some media channels to represent its own ideology and beliefs. For example, the Furrat TV channel belongs to Shiiha and just reports the articles that benefit Shiiha. Al-Sharqia TV channel performs in favor of the Sunni sect.

This separation has undermined the role of media and press in underpinning the way of understanding and dialogue between groups and shortened its effectiveness in serving a particular idea of religious groups and political parties. In addition, while the Iraqi government emphasizes the unity of Iraq, the sectarian media has expanded the space between Iraqi ethnic components and diminished the national and social value of the Iraqi community. Izabella Karlowicz mentions "the dangers of a poorly planned assistance to the

³⁸ Information Network News, "Freedom of the press in Iraq to where?" 5 May 2006. <http://www.annabaa.org/nbanews/56/262.htm>.

development of the Fourth Estate {free press} in post- conflict areas, which may cause an outburst of ethnic conflict rather than fostering peaceful cohabitation.”³⁹

The affiliation of the press with the government, sectarian religious groups, and political parties shortens the scope of the free and independent press in Iraq. Because if only those press agencies were funded that serve the policy of the elites, then there will be no bridge between citizens and the government. Also, there will be no way to criticize the policies of the government and improper governing by the officials. Therefore, the Iraqi press requires independence to carry out its responsibility to provide opportunities for democracy and democratic society. The press should be regulated through a law, a law which preserves the profession of journalism in such a way that journalism should not be exploited for serving a particular goal of one group but instead should serve the public interest in support of and be transparent governance.

3.3 Civil Society in Iraq

As civil society organizations are essential in democratic development, it is necessary for them to be allowed to practice their profession free from state intervention. Especially, in Iraq after the invasion in 2003, the existence of civil society organizations was quite important for strengthening and encouraging the successful process of democratization. Iraqi civil society started from zero, because prior to 2003 it was kept silent under the Baath Party. The war collapsed the Iraqi government and destroyed social, political and economic infrastructures,

³⁹ Monroe E. Price, Ibrahim al Marashi and Nicole A. Stremla, Media in the peace-building process: Ethiopia and Iraq, chapter 9.
<http://www.hks.harvard.edu/fs/pnorris/Acrobat/WorldBankReport/Chapter%209%20Price,%20Al%20Marashi,%20Stremlau.pdf>.

which greatly contributed to produce Iraq's needy and poor society. Therefore, civil society in Iraq was in need of foreign encouragement and International Non-Governmental Organizations (INGO) to act for providing services to the Iraqi people and contribute to shaping democracy. After 2003, NGOs as an effective part of civil society developed and their number increased. *"In 2006, in Iraq 10,000 NGOs were registered."*⁴⁰

The humanitarian requirement of the Iraqi population after all the years of a fragile economy during the Baath Party era and the need of the people for a civic life stimulated the founding of many local NGOs and the influx of many INGOs into Iraq. According to the NGO Committee Coordination for Iraq (NCCI), INGOs and Iraqi NGOs were frequently supported financially by states, particularly the U.S government and international organizations. In 2010 and 2011, the main donors such as the European Commission and European Union member states, especially the United Kingdom, reduced their donation to Iraqi NGOs in the belief that "Iraq is a rich country."⁴¹

In fact, Iraq is the third richest country in oil reserves, and its national budget is based on oil revenue, but Omar Maktab, an Iraqi political analyst, mentions that the "Iraqi state still lacks effective capacity and currently is unable and will be unable to serve the population for a long time to come."⁴² Basically, it is the duty of the government to serve its people and empower the bases of democracy through securing human rights and building the rule of law, because the government is chosen by people. The government should provide them with equal rights and well being. But when a government does not provide for its people's security, freedom of

⁴⁰ Cécile Génot, International NGOs in Iraq, NGO coordination committee for Iraq, 2010. <http://southsudanngoforum.org/wp-content/uploads/2011/05/NCCI-Survey-INGOs-Iraqi-NGOs-Draft-2.pdf>.

⁴¹ Ibid.

⁴² Ibid.

expression, justice, and democracy then the country will move towards chaos, injustice, corruption and denial of human rights. This situation will make people to have a negative attitude towards the government and complaint against its policy.⁴³ Therefore, the Iraqi government should pay attention to the people and provide them with the assets and revenues that come from its natural resources and try to empower the rule of law in the country in order to ensure justice for all individuals.

In fact, the end of donations to Iraqi NGOs negatively affected the role of civil society and NGOs sustainability, because if the state was not ready to support the local NGOs financially and there was no other financial source from out of state then the organizations will not be able to carry on their activities. The INGOs could play a crucial role in reviving local NGOs in Iraq and contributing to them in a capacity building program by providing financial help, supervising and monitoring their activities. The situation of isolating civil society in Iraq by the government through not being ready to fund them has undermined their role, while civil society organizations are a big part of the democratic process by being a focal point between citizens and the state. Also they contribute with the state to set policies and finding solutions for problems that the people face in their life. In most of the countries such as European countries that seek social welfare, they provide financial help to civil society organizations to practice their activity out of the state's control and they will be funded from the state budget through the municipalities after the organizations submitted their plan of activities and projects. But in Iraq, the state has left the funding issue for civil society organizations to the

⁴³ U.S Declaration of Independence (July 1776), Language in Public Policy and Management (reader, 2011), 79.

external donors and the state will not pay attention to fund them for more integration between the society and the state.⁴⁴

After 2003, most of the civil society organizations were representing the message of political parties rather than society. They were funded by the parties but showed themselves as non-political. Their mission was to get support of people for the party's beliefs through offering social programs and this applied especially at elections which the parties required citizen's vote to win. Generally, the organizations which belong to the political parties and other organizations supported by INGOs have positive objectives, but it may be possible to differentiate between the organization which not only provides social services but also criticizes the government's policy and bridges between the state and the citizens.⁴⁵

However, the evolution of the civil society organizations is important in Iraq and necessary to make changes with regard to society's awareness and potentiality; it is also crucial for the survival and promotion of the democratic and civic system. Democracy cannot exist through political decisions alone but instead, through a process that needs to be fostered continuously.

So, the government can support and activate civil society organizations in Iraq to effectively contribute to the process of democratization. Civil society organizations can facilitate the democratic process through publishing articles that instill political awareness among people, monitoring the condition of human rights in the country, and revealing the weaknesses of the governing system.

⁴⁴ Ibid.

⁴⁵ Maha Abdulkarim, "The assessment of the role of civil society in Iraq," July, 2011. <http://www.qanon302.net/news/news.php?action=view&id=5172>.

Moreover, during the booming of civil society organizations in Iraq, women's organizations took a large part in civil society to defend the rights of Iraqi women. Iraqi women were in need of such organizations to represent their rights and problems they face. Mrs. Suhaila Al-Asadi, director of Supporting Integrity project in Iraqi governorates mentions that, "Women's organizations constitute the largest proportion of Iraqi civil society organizations." But still few women's organizations in Iraq undertook active roles to serve women's rights properly. For example, Mrs. Ibtisam Latif, director of generating income for the World Women's Organization states that, some organizations could provide good services to women such as "Women Organization for Women in the World" which was founded in 1993. Each year its programs benefit nearly 10000 women around the world in places such as Sudan, Nigeria, and Congo. It also scattered its activities in Iraq in 2003. The organization provided excellent services to "raise awareness of social, health, economic, and development of skills and capabilities"⁴⁶).

3.4 Democracy in Iraq

According to Bahhadin Nuri, "Iraq in its history has never enjoyed the real democratic system."⁴⁷ While Iraq has passed through subsequent different regimes, none of them was willing to apply the form of a democratic system to prevent autocracy and authoritarianism. Especially during 35 years of Saddam Hussein's rule, democracy was completely undermined and absent in Iraq. The regime through imposing its authority and power totally controlled

⁴⁶ Amjad Amjad & Ibtisam Abdulrahim, civil society- little but best, Article (Arabic), Oct 2011. <http://www.alnaspaper.com/inp/view.asp?ID=5151>.

⁴⁷ Bahhadin Nuri, "For the success of political process to transform Iraq to democracy," (Arabic), June 2011. <http://www.ahewar.org/debat/show.art.asp?aid=265127>.

the organs of the government. The Baath Party monopolized all tools that democracy required to create a good government system and civic society.

After 2003, the doors opened for establishing democracy, and Iraq entered a new era to use its capacity to build a prosperous democratic system and modern society. However, some argue that democracy cannot be applied in any society by military force and especially in Iraq which includes Eastern culture, different sectarian religions, different religious and secular political parties and tribes, who will not digest the U.S. aim for rooting democracy in Iraq. Democracy should arise within the nation itself.⁴⁸ As Iraq's democracy is not yet stable and still in the formative process, there are significant indications of emerging democracy in Iraq even so which can be promoted. For example, prior to 2003 in Iraq there were no civil society organizations except those that represented the Baath Party. Also, there were no free and democratic elections to exchange power and government.

In fact, Iraq held democratic elections in 2005 with the participation of multiple-parties, instead of one politically dominant party as in the Baath Party era to monopolize the government. In addition, in 2005 the Iraqi people for the first time voted freely for a permanent constitution which represents all Iraqi people.

The political process in Iraq, however, still does not meet conditions of an ideal democracy and the country's civic society remains unsatisfactory. For example, civil society organizations are not actively supported to facilitate the democratization process and Iraq suffers from corruption. According to Transparency International Organization, "Iraq ranked as the third worst country in the world for corruption in 2006, 2007, and 2008- and the fourth

⁴⁸ Muhammad Yassin, democracy in Iraq between illusion and mirage, April 2011.
<http://globalarabnetwork.com/studies/3002-2011-04-10-22-58-37>.

worst in 2009.”⁴⁹ Human rights are violated despite having a plentiful number of civil society organizations which specialize in that area, but they do not have much effect on the improvement of human rights. However, even as these problems exist, the state can commit to improvement of the imperfect situation and modify it in future; Iraq continues to suffer the aftermath of a fascist regime and war that left devastated the political, social, and economic infrastructure. What Iraq accomplished between 2003 and 2005, establishment of a permanent constitution, took 8 to 12 years in Japan and Germany after the Second World War.⁵⁰ Democracy is a long process that needs time to grow all its principles in order not fall in trouble with it. As Bernard Louis said, “Democracy must be treated like dealing with a drug; a large dose may kill the patient.”⁵¹

3.5 The rule of law in Iraq

“The rule of law is the foundation for communities of opportunity and equity—it is the predicate for the eradication of poverty, violence, corruption, pandemics, and other threats to civil society”⁵² (William H. Neukom, 2011). Building the rule of law is crucial for enhancing social, cultural, political, and economic development in the country and sets the framework for the respect of human rights. Without the rule of law the community will fall into chaos and tyranny, crime will increase, corruption will become a devastating phenomenon, and

⁴⁹ Abbas Kadhim, Iraq Quest for Democracy amid Massive Corruption, March 2010. <http://carnegieendowment.org/2010/03/03/iraq-s-quest-for-democracy-amid-massive-corruption/6bjj>.

⁵⁰ Sara Walid, “Evaluation of the Democratic Process in Iraq, 2008. <http://voteiraq.maktoobblog.com/1542411>.

⁵¹ Ibid.

⁵² Mark David Agrast, Juan Carlos Botero, Alejandro Ponce, The World Justice Project, (Rule of Law index, 2011), 1. http://worldjusticeproject.org/sites/default/files/wjproli2011_0.pdf.

poverty will sicken the society. Also, illiteracy, which is the deadliest disease of underdevelopment, will take root and retard the country's drive for advancement. With the rule of law all individuals will feel safe and secure and their rights will not be violated whether they are rich or poor, illiterate or educated. All humans should be equal before the law without regard to their color, race, language, religion, politics and culture.

To make the rule of law effective, there should be an independent judicial system to provide justice, equality, and strengthening the rule of law. The judges should be neutral and free from any pressure that comes from either the government or the political parties or non-governmental interest groups. They should be free in making decisions according to the law in order to provide all individuals with equality as they pursue their cases in the courts. An impartial judiciary is necessary to create a fair society where everybody will be subject to law that is free from interference, and private law which leads to chaos and confliction. Usually, it is obligatory to the society to adhere to the law which is set by the government but people must be asked to obey laws that they can and will obey.

Elizabeth Cady Stanton, an American social activist and founder of the women's rights movement, (1860) stated that "if laws become impossible—or even difficult—to follow, the respect of citizens for the law will begin to erode."⁵³ Of course, the law should comply with the cultural, political and social environment of the people in the country to make them able understand, respect, and uphold it. Laws that restrict the rights of individuals will lead to social, political, and economic trouble and it will affect the country's development, especially in respect to weakening the rule of law and democracy.

⁵³ ABA Division for Public Education, "What is the rule of law?". http://lre.ncbar.org/media/3546225/ruleOfLawPart1.pdf?keepThis=false&TB_iframe=true&height=575&width=750.

As the political system of Iraq changed after 2003, Iraq faced a wave of security instability, corruption, and religious conflict between ethnic and sectarian groups which covered most of the country. However, the autocratic system changed but still democracy could not become the successful model in Iraq to harmonize the component ethnic populations and reduce the historic tension between people. This is because rule of law was absent, and citizens did not have equal opportunity to practice their rights and manage them towards coexistence and coherence. The practice of democracy plays a vital role in civil society to unify people, but this practice cannot be found in Iraq and even in the future it will be more difficult to find it if Iraq does not change to the state of law and civic society. Also, Iraq has fallen into a state of deep administrative and financial corruption along with security instability. Therefore, in Iraq still there is no clearly designed democratic system because there is no rule of law and peace. (Democracy and peace are twins and they are not separate from the state of law.

They together, in parallel, can be used as a tool for confronting corruption and fighting against terrorism. But this goal cannot be achieved without the unity of democratic society and the rule of law).⁵⁴ However, the establishment of the rule of law in Iraq is not easy, because currently Iraq is experiencing the aftermath of a dictatorship system that used law in its own interest and used it as a tool to protect its policies and regime. Besides, currently Iraq suffers from multi-ethnic and sectarian conflict which has resulted in political instability. The rule of law could not mediate to resolve the problems that Iraqi society faces, because it is not independent. According to the Middle East Report (2011), in Iraq the judicial system is undermined because of political interference. Sometimes it includes threats and violence against judges and their family members.

⁵⁴ Khaled Khaled Yunes, "Democracy will not succeed in Iraq without rule of law and civil peace," March 2007. <http://www.ahewar.org/debat/show.art.asp?aid=110021>.

The judges mostly face those difficulties when they have a high-level corruption case to decide, so the threats oblige them to compromise their decision for the safety of themselves and their family members. The report emphasizes that the chief justice is not independent and this has caused facilitation of political interference. It also mentions that in a constitutional context, the Court has rights of interpreting the constitution independently, but the government in 2009 imposed on the court its special interpretation. In addition, in January 2011 the Federal Supreme Court made the decision to annex the independent agencies such as “the Central Bank, and the Justice and Accountability commission to the Council of Ministers which constitutionally should be attached to Parliament.”⁵⁵

The abovementioned situations indicate that presently the Courts are not effective to empower the rule of law and to check the government’s policy in Iraq. Whenever the law is subordinated by the government, the law will be like a tool and only the powerful people will be able to use it for their own interests. And the nature of law does not accept inequality and injustice, but instead should hold all citizens and even the government accountable before itself.

U.S. Supreme Court Justice Anthony M. Kennedy states that, “the law must respect and preserve the dignity, equality, and human rights of all persons.” He enriches the idea of rule of law with the concept of “moral content” and brings the example of Nazi Germany, where, however, there were laws and those laws were enforced, but because the laws themselves were immoral as was their enforcement, we cannot consider this as having the rule of law. In Nazi Germany the “moral content” did not exist as Justice Kennedy describes it, as “dignity, equality, and human rights of all response.” Since the “moral content” was not available, this

⁵⁵ Middle East Report, Failing oversight: Iraq’s unchecked government, (September 2011), 24, 25.

meant that the political authority and officials were more powerful than law. In this case will became a tool for protecting the power and interests of a certain group and was certainly not be applied to all equally.⁵⁶ Justice Kennedy's concept for the rule of law is appropriate to the situation in Iraq because in Iraq there are Courts and a Judiciary system and the laws exist, but it could not manage the country to be a state under law and keep equality before the law. Also it could not be an incentive factor in reconciliation between ethnic groups and to cool down the fire of the conflict between them which has become a reason for delaying the development of democracy and creating a democratic society in Iraq.

Therefore, in the absence of the rule of law, currently Iraq suffers from inequality, corruption, poverty, bad governance, and a fragile economic situation that all together has delayed the development process and deprived the country of justice and prosperity. Building the rule of law for Iraq is essential for creating an environment of social reconciliation and peaceful coexistence. Iraq's stability will return by strengthening the rule of law by separating the judiciary system from political interference and when the government officials feel accountable before the law. It will also be necessary to put unbiased judges in the courts and give them freedom to make decisions on any case according to the law.

3.6 The Iraqi Draft Law and ARTICLE 19 Organization

On 9 August 2011, the Iraqi government adopted a new version of the Draft Journalist Protection Law (Draft Law) which consists of eighteen Articles to establish the protection of journalists' rights in Iraq. The draft law has been commented on by ARTICLE 19 which

⁵⁶ Robert Stein, Rule of law Symposium, (2009), 299.

<http://www.law.umn.edu/uploads/kt/j1/ktj1SiAeuvdPv-oeK2UdA/Stein-Introduction-Final-Online-PDF-03.30.09.pdf>.

emphasizes the development of the freedom of expression and the freedom of information worldwide according to the international standards. ARTICLE 19 closely watches the human rights conditions around the world, and to make more improvement, yearly makes and presents a report on issues related to human rights. Regarding the Iraqi journalist's draft law, ARTICLE 19 show its concern through its view and criticism of the Iraqi draft law and aims that it be appropriate with the Draft Law on the Protection and Regulation of Journalists and Media Workers that was issued by ARTICLE 19 in August 2010 to pave the way to guarantee journalists' rights in Iraq and make them more secure.⁵⁷

Andy Artmann (2011) mentions the concern of ARTICLE 19 to the Iraqi draft law, that it is *“not only because its provisions are contrary to international human rights standards on freedom of expression and freedom of association, but also because they are counterproductive to its apparent objectives of protecting journalists.”*⁵⁸ ARTICLE 19 recommends the Iraqi government officials to better protect the rights of journalists by following the provisions of international legal standards on human rights. The following is the analysis of ARTICLE19 on some Articles of the draft law for Iraqi journalists' protection in terms of international standards for human rights. The draft law in Article 1(I, II) mentions that *“the provisions of this law shall be applied only to the Iraqi journalists and all journalists shall be each members of the journalist Syndicate.”* According to ARTICLE 19, this represents a restriction upon journalists, because it defines that only members of the

⁵⁷ ARTICLE19, “Comments on Draft Journalist Protection Law of Iraq,” 2011. <http://www.ARTICLE19.org/data/files/pdfs/reports/comment-on-draft-journalist-protection-law-of-iraq.pdf>.

⁵⁸ Andreas Artmann, Iraq: “Draft Law on protection journalists must meet freedom of expression standards,”(May,2011).<http://www.xing.com/net/meinung/news-without-censorship-181617/iraq-draft-law-on-protection-of-journalists-must-meet-freedom-of-expression-standards-36671666/>

journalists' Syndicate are considered as journalists and it deprives the non-Iraqi journalists from protection and free rights to work. The draft law provides protection only to Iraqi journalists as it mentions in Article 2 that *"This Law aims at providing protection for Iraqi journalists in the Republic of Iraq and securing their rights,"* but obliges them to have membership before their rights are secured. This prevents journalists from freely following their profession without belonging to any union and organization. Also it provides the Syndicate with dominant power over the journalists and controls them completely and does not allow them to operate freely in the country. Besides, the provision does not consider the choices of the journalists, whether they agree to join the union or not, or what union they prefer to join.

Both Articles emphasize the condition of membership in the Iraqi Journalist Syndicate in order to secure the journalists' rights. Article 2 points out the protection of journalists' rights but does not define clearly who is a journalist. If media workers were excluded, then it is a violation of their rights, because they also face the same problems of attack and repression.⁵⁹ However, Article 1 has isolated the Iraqi journalists, identifying them as different from foreign journalists. Despite that, they should adhere to the order of the Journalist Syndicate as it is mentioned in Article 15: *"Local and foreign media bodies operating in the Republic of Iraq shall commit to conclude employment contracts with journalists working therein according to a form to be prepared by the Journalists Syndicate, and a copy of the contract shall be deposited thereat."* In ARTICLE 19's point of view, this provision refers to all locals and foreign media channels that are operating in Iraq. They should contract with the journalists on the basis of the form provided by the Journalists' Syndicate, and they are

⁵⁹ ARTICLE 19, "Comments on Draft Journalists Protection Law of Iraq," (2011). <http://www.ARTICLE19.org/data/files/pdfs/reports/comment-on-draft-journalist-protection-law-of-iraq.pdf>.

obliged to sign the contract which is a key factor for their operation in Iraq. ARTICLE 19 states that it establishes a real system for registration which international human rights bodies assure that “registration requirements on the print media are unnecessary and may be abused and should be avoided. It is on the fact that the form contained the personal details of information of the journalist and it is violation against their privacy.”⁶⁰ Thus, registration is inappropriate in terms of the interest and profession of journalists, because if a journalist wrote an article that did not comply with the rules of the Syndicate, the organization and the journalist would face the penalties that the Syndicate has prescribed for this purpose. Thus, the journalist and his profession will be at risk of having no freedom. The journalists should not be obliged to write under any pressure at any time. Here, we see that the Syndicate aims to control the voice of media bodies in Iraq and make them to work in service of the draft law by following the provisions of the Article.

According to Article 7 of the Universal Declaration of Human Rights, “All are equal before the law, and are entitled without any discrimination to equal protection of the law, all are entitled to equal protection against any discrimination.”⁶¹ But Article 9 of the Iraqi draft law states, “*Any person who assaults a journalist while on or because of duty shall be sentenced to the same sentence set for those who assault an officer while on or because of duty.*”

Of course, this gives priority to the journalists in case they face any kind of assault which discriminates between community members. And this opposes the Universal Declaration for Human Rights, because it does not provide all individuals with equal protection under the law; thus ARTICLE 19 argues that this Article 9 is imperfect. First, because by the word “officers”

⁶⁰ Ibid.

⁶¹ Center for Law and Democracy, “Note on the Draft Journalist Protection Law,” April 2011. http://www.law-democracy.org/wp-content/uploads/2010/07/11.04.Iraq_Journalists.pdf.

it is not clear whether it means a police officer or government employee. Second, Article 9 mentions that any assault against a journalist while s/he is on duty or because of duty will have equal punishment as the same assault against an officer while s/he is on duty or because of duty.

ARTICLE 19 calls this problematic, because journalists and officers are provided with higher and special protection in comparison with other individuals by punishing violators more strictly. However, there is no notice in international human rights law to prioritize the rights of officers and journalists because of their duty to allow punishment of assaults against them more than assaults against other people. In addition, according to Article 5 of the Universal Declaration of Human Rights, “*No one shall be subjected to inhuman treatment or punishment.*”⁶² This indicates that all humans are to be protected from torture or cruel treatment, but Article 9 in the draft law differentiates between journalists and normal individual rights which in fact are equal. Therefore, ARTICLE 19 prefers that this provision be amended such that the state should make fair and neutral investigation for any crime being made against the journalists and other individuals equally.⁶³ The government should not differentiate between individuals because all humans are equal before the law and it should be applied to everyone equally.

The sovereign power of law encourages the development of society because with fair law and justice everybody will be punished for the violation of rights of others. The Iraqi draft law Article 3 states, “*Departments of the State, public sector and the other bodies journalists practice their profession before shall commit to providing facilitations necessary to the*

⁶² Ibid.

⁶³ ARTICLE 19, “Comments on Draft Journalist Protection Law of Iraq,” 2011. <http://www.ARTICLE19.org/data/files/pdfs/reports/comment-on-draft-journalist-protection-law-of-iraq.pdf>.

journalists' duties so as to secure the dignity of journalism." This exposes the government's willingness and commitment to the protection of journalists' dignity through facilitations required to provide the protection. ARTICLE 19 argues that the meaning of "facilitation" is not clear. It suggests that the "facilitations" provide the meaning of state's "assistance or capacities" to clearly include "effective system of law and order." Meanwhile, ARTICLE 19 suggests to make "law and order" more crucial, it should protect not only journalists but the whole society.⁶⁴

The suggestion of the state's support for the dignity of journalism by applying "law and order" is essential in equalization of human rights in Iraq through application to each individual without any discrimination. This will encourage establishing the rule of law and provide society with justice, such that nobody feels his/her rights are undermined. Besides, ARTICLE 19 finds another problem with the notion of "*dignity of journalism*," which it believes may undermine the protection of journalists. For example, a journalist who has been threatened continuously on the basis that s/he devalued the "dignity of journalism" by criticizing the government's policy, the police may refuse to protect him/her under the effect of this provision.

Articles 11 mentions that, "*If a judicial officer is informed about a witnessed crime committed against a journalist or that crime comes to his/her knowledge, s/he shall inform the security authorities, magistrate and prosecutor about the crime; go immediately to the crime scene; and take action pursuant to the law,*" and Article 12 states that, "*If the magistrate is informed about a witnessed crime committed against a journalist, s/he shall immediately go to the crime scene and take action pursuant to the law.*" The above Articles

⁶⁴ Ibid.

are complementary to each other. Although they try to provide journalists with protection, ARTICLE 19 argues that both Articles have imperfections. First, there is no clarification for the role of “Judicial officers, security authorities, magistrates and prosecutors” because in Article 11 judicial officers are the source of responsibility for protection of journalists. In case they were informed of any crime or violation against journalists they should transfer the message regarding a crime to “magistrates, security authorities, and prosecutors.” In Article 12 magistrates are required to go to the crime scene and take action as they have been acquainted with the crime. ARTICLE 19 points out that the “state law enforcement officials” should take the responsibility for any crime against the journalists and they should take action instead of judicial officers.

Second, ARTICLE 19 believes that the phrase “a witnessed crime committed against a journalist” in Article 12 neglects the rights of journalists who have not a witness for the violation committed against them such as the one who has kidnapped or disappeared and has no witness. Third, ARTICLE 19 mentions that in the whole provisions of the Draft Law there is no reference to an “institutional mechanism” such as an independent established court to hold the criminal accountable who is committing a crime or violation against the journalists and deal with it by law.⁶⁵

Article 14 says, “*The State shall provide free treatment to any journalists injured due to a terrorist act while on or because of duty.*” Article 14 mentioned that only those journalists who have been injured during a terrorist action or during their duty will be provided with health care. ARTICLE 19 finds it difficult to recognize whether the journalist was injured during terrorist action or on duty. Also ARTICLE 19 argues that according to Article 14 that one who is not a journalist and injured will not be eligible for health care, which under

⁶⁵ Ibid.

international law all individuals in any society have the equal rights to take medical care. Moreover, there is no justification why journalists should have priority over other individuals in society while the citizens are also may injured while carrying out professional duties but not as a journalist.⁶⁶

Regarding the condition of journalists with justice, the Iraqi draft law in Article 10 points out that, *“The journalists Syndicate shall be informed about any complaint filed against journalists. He/She may be questioned and interrogated for a crime attributed to him/her. Chairman of the Journalist Syndicate or his/her delegate may attend the interrogation or preliminary questioning or trial.”* ARTICLE 19 argues that Article 10 creates an environment where journalists can be subject to “arrest, detained, questioned, and put on trial,” and also criticizes the use of “interrogate,” a word which is unreasonable because it suggests that the state has power to investigate a journalist with sever questioning, torture and inappropriate treatment. Besides, ARTICLE 19 believes that Article 10 does not contain the legitimate requirement for detention in compliance with international law because no one should be detained except by national law and it should not be arbitrary.⁶⁷

Usually, journalists need information to manage their work. The Iraqi Draft Law has mentioned the right of information for journalists in Article 4: *“Journalists may have access to information, news, data and statistics from their sources as permitted by the law, and maintain the confidentiality of their sources of information.”* And according to Article 6, *“A journalist may have access to formal reports, information and statements, and the related body shall enable him/her to have such access and capitalize on them unless disclosing the*

⁶⁶ ARTICLE 19, “Comments on Draft Journalist Protection Law of Iraq,” 2011.
<http://www.ARTICLE19.org/data/files/pdfs/reports/comment-on-draft-journalist-protection-law-of-iraq.pdf>.

⁶⁷ Ibid.

same harms the public interest and violates the provisions of the law.” In this regard, ARTICLE19 states that both Articles are imperfect because Article 4 allows journalists access to information simply under usual domestic law and Article 6 allows s access to information only when the information was not against the public interest. This declares that both Articles are restricting the journalists for gaining information but in different ways. In Article 4 mentions the journalists can access information simply and in Article 6 they are allowed not allowed to get information if it was against public interest. The journalists should be free to access information without condition as ICCPR in Article 19 states that “everyone shall have right freedom to seek, receive, and impart information and ideas regardless of frontiers.”⁶⁸

ARTICLE 19 mentions that the most reasonable way that helps media and journalists to practice their profession is to enact the “information law” which for Iraq is essential, as soon as possible. Through the information law, the journalists will have the complete right to request information. ARTICLE 19 suggests that for Iraq the adoption of the legislation is important. The right to access information is vital for enhancing democracy, especially for Iraq which suffers from sectarian conflict and political instability and now is struggling to establish democracy and the rule of law. It suggests also that Iraq should mostly focus on strengthening the correlation of democracy, rule of law, and human rights. Another important aspect of the right of information is that it will expose corruption and help the government to make reform for good governance. It is Iraq should be a member among “90 states who have adopted legislation or national regulation on the right to access information to date.”⁶⁹

⁶⁸ Manual on Human Rights Education with Young People – Council of Europe, summary of ICCPR and ICESCR, The International Covenant on Civil and Political Rights (ICCPR).
http://www.eycb.coe.int/compass/en/pdf/6_4.pdf.

⁶⁹ Ibid.

In addition, Article 4 obliges the journalists to expose the “confidentiality of their sources” which according to ARTICLE 19 is unlike the “regional, national, and international standards. Meanwhile,” according to Center for Law and Democracy the protection of “confidential sources,” is one among those Articles which is in benefit of journalists.⁷⁰ The protection of source’s identity is essential to the journalists because the informants will continue to provide the journalists with information. Governments that oblige journalists to expose the confidentiality of their sources undermine the independence of media and press. And the informants may not give information to the journalists because of their safety especially when the information is sensitive.

The Draft Law in Article 5 states, “*A journalist may refrain from writing or preparing press materials incompatible with his/her beliefs, points of view and professional consciences. II. A journalist may comment as s/he deems appropriate to clarify his/her point of view regardless of the difference of opinion and intellectual interpretations without prejudice to the law.*” And Article 6 states, “*A journalist may not be held accountable for his/her opinions or the information s/he publishes and this may not be a reason for endangering him/her unless his/her act has violated the law.*”

However, in the Iraqi constitution regarding the freedom of expression there is Article (38) which treats respect for freedom of expression but on the basis of respecting “public order and morality.” ARTICLE 19 believes that the Article is weak in terms of its guarantees for journalists’ rights. Under the 2005 constitution, there are still some laws which belong to Saddam Hussein’s era and are still in force, such as the law for criminalizing defamation in the Iraqi Penal Code laws of 1969, which restricts the journalists from criticizing public officials, symbols, and the government. Also, it criminalizes any attempt to encourage people

⁷⁰ Ibid

to ask for constitutional change and efforts to enhance “banned ideologies also considered as crime of defamation.” Therefore, ARTICLE 19 recommends the amendment of the Articles and mention that journalists and individuals have the same rights of freedom of expression, and restriction should be set by law “legitimate aim and proportionate”⁷¹

⁷¹ Ibid.

CHAPTER FOUR

4.0 The Condition of Journalists

The U.S war against Iraq in 2003 eliminated the bloodiest regime in the history of Iraq, but the period after the war consisted of an unsafe and unstable political situation. Killing and crime became a daily phenomenon and the most damaged were civilians. According to The Iraq Body Count Project (IBC) for recording violent civilian deaths, more than 150,000 people have been killed from March 2003 to October 2010, of which 80% were civilian. This number is in addition to 4,744 deaths among soldiers of the coalition forces.⁷² As the media outlets expanded and hundreds of media channels opened in Iraq, the violent situation also caused the journalists to face difficulties to perform their work and to face risk of death. According to The REPORTERS WITHOUT BORDERS 2010 Report for Press Freedom, 230 Iraqi media people died from March 2003 to August 2010 (see Figure 1).⁷³ The figure indicates that the journalists in Iraq have passed through tough situations in such a way that the death toll in Iraq is much higher than the 63 killed media workers in Vietnam War from 1955 to 1975, Algeria's civil war 1993-1996 in which 77 media people died, and in Yugoslavia from 1991 to 1995, when 49 professional media people died.⁷⁴ But the Committee to Protect Journalists (CPJ) has released the figure of journalists killed after August 2010, rating the death figure from 8 September, 2010 to the end of the year as 4 more journalists were killed, and in 2011 only 5 journalists were killed.⁷⁵

⁷² Iraq War Logs, "What the numbers reveal," 23 October 2010.
<http://www.iraqbodycount.org/analysis/numbers/warlogs/>.

⁷³ Reporters Without Borders, "The Iraq War: a heavy death toll for the media," (2003-2010), (August 2010), 1. http://en.rsfb.org/IMG/pdf/rapport_irak_2003-2010_gb.pdf.

⁷⁴ Michael Astor, Iraq's Heavy Journalist Death Toll Keeps Climbing, July 2010.
http://www.huffingtonpost.com/2010/09/07/iraqs-heavy-journalist-de_n_708299.html.

⁷⁵ Committee to Protect Journalists, see: <http://www.cpj.org/killed/mideast/iraq/>.

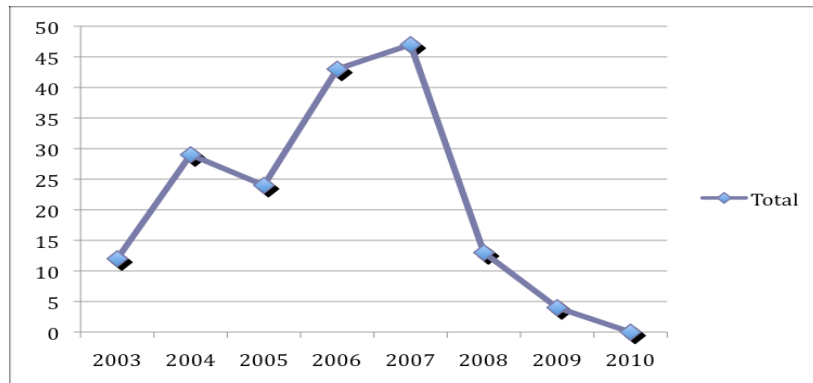


Figure 1: Trend in the number of journalists killed between 2003 and 2010

Source: REPORTERS WITHOUT BORDERS, “The Iraq War: a heavy death toll for the media,” (2003-2010), (August 2010).

The killing of journalists occurred in different parts of Iraq by daily explosions and killings by unidentified terrorist groups, and sectarian extremists which targeted the journalists as well. However, just after 2003 Iraq became the arena of daily tragic events particularly up to 2007, because the government completely failed to halt sectarian conflict. The government could not control the borders and it paved the way for the external militias from different countries to enter the country and feed the fire of tensions between Iraqi community groups. The intervention by neighbor countries such as Syria, Iran, and Turkey, including the other Arab countries for their political and ideological reasons, deteriorated the political situation in Iraq more considerably. Thus, the more unstable and unsafe situation affected negatively the condition of the journalists’ profession and their safety. In 2008 the Iraqi political situation got better in comparison to 2006 and 2007 as the “U.S sent 30.000 more troops to Iraq for reducing violence and promoting national reconciliation,”⁷⁶ and worked with “the Sons of

⁷⁶ Reuters, “Timeline: Invasion, surge, withdrawal; U.S. forces in Iraq,” December 2011.

<http://www.reuters.com/article/2011/12/18/us-iraq-usa-pullout-idUSTRE7BH08E20111218>

Iraq,” the volunteers that helped to secure key infrastructure and locate extremists among the population. “There were 103,000 volunteers contributing to local security in partnership with Coalition and Iraqi forces.”⁷⁷ However, the media professionals that were targeted in attacks were mostly Iraqis but foreigners were also involved. Figure 2 shows that the rate of Iraqi journalists killed is higher than those of foreigners. After 2007 the number of foreign journalists killed declined while in years before, the trend shows the number was higher. (Figure 3) The main reason behind declining in number of the journalists killed was policy of embedding of foreign journalists with the military forces.⁷⁸

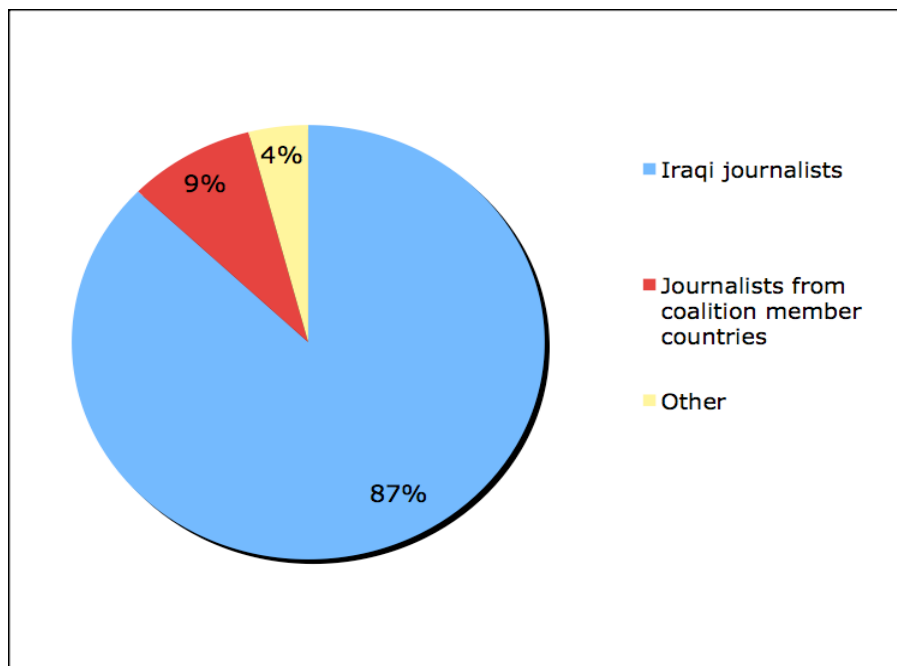


Figure 2: Breakdown by nationality

Source: REPORTERS WITHOUT BORDERS, “The Iraq War: a heavy death toll for the media” (2003-2010), (August 2010).

⁷⁷ Measuring stability and security in Iraq,” report to Congress, (July 2008), 1.
http://www.defense.gov/pubs/pdfs/Master_16_June_08_%20FINAL_SIGNED%20.pdf.

⁷⁸ Iraq War Logs, “what the numbers reveal,” (23October 2010), 5.
<http://www.iraqbodycount.org/analysis/numbers/warlogs/>.

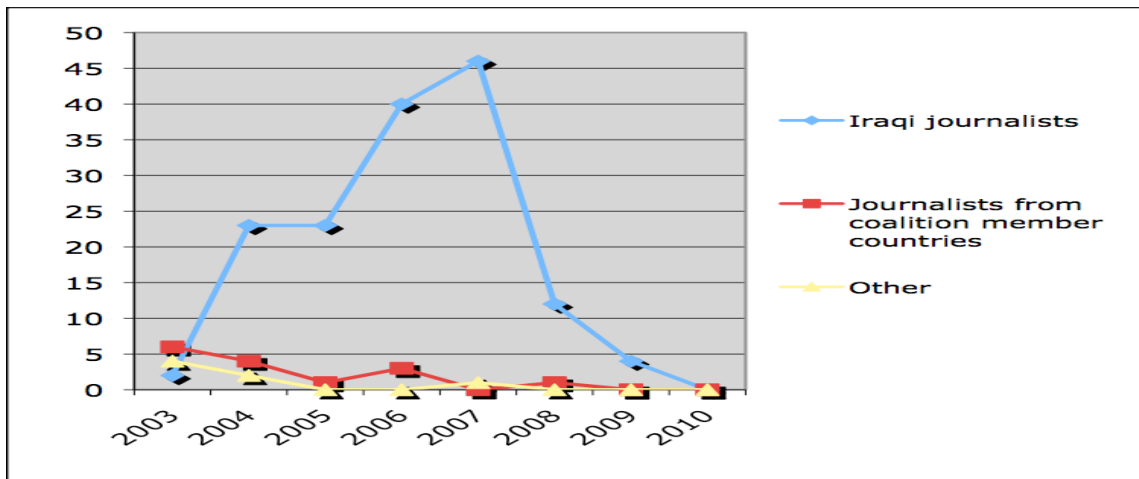


Figure 3: Trend in the number of journalists killed by nationality

Source: REPORTERS WITHOUT BORDERS, The Iraq War: a heavy death toll for the media (2003-2010), (August 2010).

4.1 Abduction of Journalists

Another risk that journalists face in Iraq is abduction. According to the REPORTERS WITHOUT BORDERS Report, 88 journalists and media professionals were abducted between 2003 and 2010. Among them 42 journalists were freed and 32 of them were executed, but still the fate of 14 of the abducted Iraqi journalists during these years is unknown.⁷⁹ (Figure 4) indicates that journalist abduction in 2007 was at its worst level; the (RWB) report mentions that only in that year “over 25 media professionals were abducted, therefore Iraq for several years was the biggest market for hostages in the world.”⁸⁰

⁷⁹ Ibid

⁸⁰ Ibid

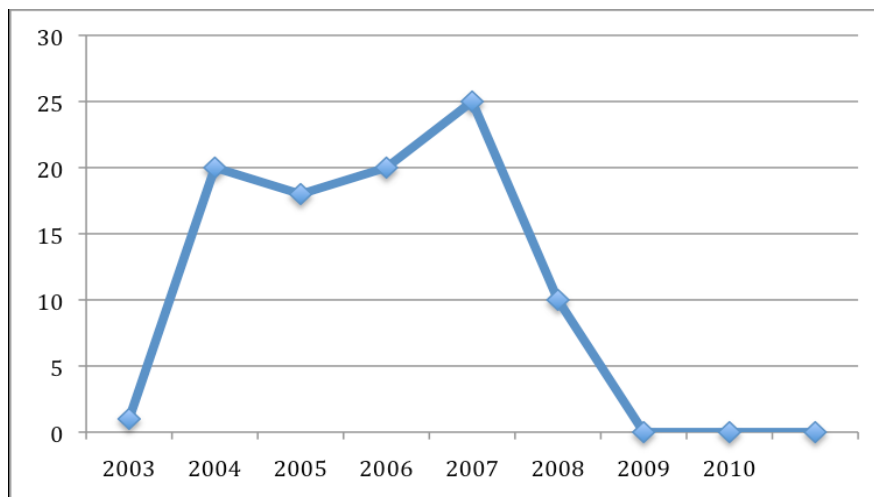


Figure4: Trend in the number of abduction

Source: REPORTERS WITHOUT BORDERS, “The Iraq War: a heavy death toll for the media,” (2003-2010), (August 2010).

4.2 The Flight of journalists

After the kidnapping and killing of journalists became a gruesome phenomenon in Iraq, many journalists fearing for their safety and that of their families fled the country. The difficulty of the unstable political situation, threats and fear of death have pushed the journalists to move outside the country.

This has damaged the course of democratic development in Iraq because free journalism is an incentive factor. Flight of the journalist from Iraq damages the role of the press and diminishes the bridge between the government and society. As 2007 was the most dangerous year for journalists In Iraq, it drove Iraqi journalists to flee the country. REPORTERS WITHOUT BORDERS mentions the majority of journalists fled to the Iraqi Kurdistan Regional Government which provides journalists with guaranteed safety and so they settled

there. Also, nearly 200 other Iraqi journalists fled to Jordan and they received refuge there and dozens of others found refuge in Europe.⁸¹

4.3 The Iraqi Government's stance

In Iraq, because the journalists faced different difficulties of killing, abduction, and displacement, the government revealed its willingness to protect of the journalists. However, the Iraqi Government issued the first draft law for journalist protection in 2007, but still it was regarded as imperfect and criticized by the ARTICLE 19 organization that it does not meet the international standards for human rights. To make more improvement the Iraqi government issued the second draft in 2009 and approved it in August 2011 which again as in the case the first draft commented on by the ARTICLE 19 organization, this draft needs amendment because it too is incompatible with international standards of human rights.

Although, the draft law is criticized, it is important groundwork for journalism in Iraq because it is an initial step that can be developed over time on the basis of law. An effective media can be produced under the legal protection of law to perform its social responsibility, contribute in exposing corruption and role in reform of governance. Despite the conception of the weakness of the draft law to protect journalists, the lack of understanding of the significance of the press as the fourth pillar for democratic development is also another problem that the journalists face. Therefore, many times they face trouble in their work, torture, and confiscation of their equipment. Hence, there should be an exclusive awareness about the role of the press and its crucial impact on the process of development.

⁸¹ Angélique Ferrat and Hajar Smoun, REPORTERS WITHOUT BORDERS, (Fifth anniversary of start of war on 20 March 2003), 2.
http://www.rsf.org/IMG/pdf/RapportRefugies_GB.pdf.

4.4 Perspectives to the Draft Law

There are different opinions among Iraqi journalists and those who have a say about journalism in Iraq regarding the Iraqi draft law for journalist protection. Some think that the draft law is an important achievement for journalists in Iraq. Muaeed Al-Lami, Chairman of the Iraqi Syndicate of Journalists, thinks that the law currently is essential for journalists. There are hundreds of journalist martyrs' families, hundreds of injured and handicapped that are in need the draft law because it has provided an Article regarding paying them a monthly pension . Also, there are thousands of journalists that work for institutions but without effective contracts to protect their future jobs. He mentions that the law is imperfect and it is because Iraq has no long- term experience with democracy. But along with democracy the law of the press can be enhanced more to meet the requirements of ARTICLE 19 for human rights.⁸²

Dyar Bamarni, an Iraqi journalist, states that many journalists agree that the draft law has not secured the journalists' rights to fully practice their profession. Bamarni also mentions that the draft did not provide them with legal protection and they continuously face the difficulty of gaining information along with the rights to keep the sources confidential. In addition, Article 16 of the draft is a controversial Article that many of the journalists do not agree with.⁸³

Others believe that the Iraqi draft law for journalist protection is not perfect to secure the rights of freedom of the press in Iraq. Many journalists believe that some Articles in the draft law are contrary to the Article 39(II) of the Iraqi constitution adopted in 2005: *"It is not*

⁸² Baghdadaya Channel TV, interview with Muaeed Al-Lami about draft law of journalist protection, April 2011. http://www.baghdadch.tv/channel_series.php?id=2286

⁸³ Deyar Bamarni, Qanun al-sa7affa, ya7mi liman? Arabic article, 11 April 2011. <http://www.iraqhurr.org/content/article/3554097.html>.

permissible to force any person to join any party, society, or political entity, or force him to continue his membership in it.”⁸⁴ For example, Article 16 of the draft law Article emphasizes that a journalist is one who has affiliation with the Iraqi Syndicate of Journalists. It means a journalist that is not a member will not be protected by the journalist protection law, which is violation against the constitution.

Article 16 is far from logical, because the journalist is the one who is participating in making opinion and affecting people’s minds. But it does not mean only those who are members of the Syndicate of Journalists are having an impact on people. Sometimes there may be journalists who do not belong to the Syndicate but she/he is effective in writing/speaking and motivating people. Therefore, the draft has violated the constitution which allows the journalist to not be obliged to belong to any institution or agency. Article 16 privatizes the journalists associated with the Syndicate and provides them with a private law for journalists, which is discrimination because it will pave the way for other entities in the society to have their own special law.

The last suggests that the draft law does not represent the needs of journalists. Ahmed Al-Chalabi, Parliament member and leader of the National Alliance Party in Iraq states that the draft law is representing the Syndicate of Journalists rather than journalists which is a step back to the years of the previous dictatorship regime. The journalists could not effectively expose the corruption in the government and could not know how the national budget is being spent. They could not also perform their profession because they should follow a law which has provided priority to the Syndicate as an institution of the government.

⁸⁴ Iraqi Constitution, Article 39. http://www.uniraq.org/documents/iraqi_constitution.pdf.

He argues that this law will be disastrous to the freedom of the press for it does not protect journalists but it protects the government from journalists.⁸⁵ Hamid Abdulla, an Iraqi professional journalist in an interview with Al-Baghdaya Channel TV, thinks that the draft law will never be implemented in reality. Everybody supposes that the draft law has secured the rights of journalists but still there is conflict between willingness to protect freedom of the press and the tendency for tyranny. Any force that is able to constrain the free press and prevent journalists from writing or publishing, never hesitates in doing so. He argues that since 1921 there has been no protection for freedom of the press in Iraq; killing more than 200 journalists since 2003 did not happen by chance; it is a plan and there are two goals behind it: “displacement and obscurantism.”⁸⁶

The draft law has generated many complaints by journalists. The effect of the complaints comes from the reality of the unsecured situation of the journalists. Keeping the flawed draft law as it is now without revising it again will generate more debate by the journalists because their rights will remain in danger. Without insuring the tasks and rights of the journalists, building a relationship between government and society will be difficult, because a free press is a guarantee to transform a message of the relationship between both sides.

4.5 View of journalists

To better understand the condition of journalism and democratic development under the protection of the rule of law in Iraq, two email interviews were conducted with two

⁸⁵ Saidq Al-Musawi, “Law for journalist protection or law for Syndicate journalist protection,” Arabic article, Al-Nasiria Electronic Newspaper, 21 July 2011. <http://nasiriaelc.com/index.php/permalink/3397.html/>.

⁸⁶ Baghdaya Channel TV, interview with Hamid Abdulla about draft law of journalist protection, April 2011. http://www.baghdadch.tv/channel_series.php?id=2286.

professional journalists. First, with Judit Neurink, director of independent media center in Kurdistan, correspondent for Dutch and Belgian media. And second, with Ahemd Al-Zawiti director of the office and correspondent of Al-Jazzera in Iraq. The following is an analysis the two journalists' responses to a number of questions regarding the condition of journalism, rule of law, civil society, and democracy in Iraq.

The first question dealt with the condition of journalism in Iraq after 2003 with regard to personal security, freedom of the press, and professional recognition. Neurink believes that journalists in Iraq could not play efficiently in democracy. Her argument is in line with the subordination of journalists and control of political parties over media in Iraq which made many journalists behave as politicians. As discussed in chapter four, she confirms that the Iraqi political parties own their media and consider the other media which do not belong to them as an enemy. Only an independent media searches critical subjects, such as corruption, bad governance, and personal lives of politicians that may expose such problems to the public. Therefore, journalists face difficulty and attacks which led journalism in Iraq to be a dangerous job.⁸⁷ In another question which focused on whether the free press has a role in promoting civil society and democracy and how it can be achieved, Neurink answered that the free press is a key factor in existing democracy.

She attributes responsibility to both the responsible press and the government. On the one hand, journalists should report rechecked information of what happens in the society and not report randomly. On the other hand, the government should convince itself that an independent press is necessary to inform the people and encourage them to contribute to political life. In addition, she encourages the journalists to respect their profession and give

⁸⁷ Interview with Judit Neurink, director of independent media center in Kurdistan, correspondent for Dutch and Belgian media, author of three book of which two were translated to Kurdish language, December 14, 2011, via email. See appendix I.

up working for politicians and political parties but instead mix with people and transform their petitions to the government in order to improve their life.⁸⁸ Of course, the task of a journalist is to define the problems of people and making a channel for relationships between people and the government. The press can play its critical role in democratic promotion when journalists could be a part of people because “in democracy everything is about people.”⁸⁹

In the last question which highlighted the essentiality of the rule of law to protect the free press in Iraq at current time, Neurink mentioned that Iraq needs an independent judicial system and unbiased judges to make decision on mistakes. But, unfortunately judges have connections with political parties and they are not independent. Therefore, journalists sometimes are punished by the courts for illogical and unjustifiable reasons and it will not help them to realize their mistakes in order to make them work in a responsible way.⁹⁰

Ahmed Al-Zawiti, has the same opinion as Neurink regarding the bad condition of media and journalists in Iraq in which the rule of law could not became source of protection of freedom of press and journalists as well. In his answer to the question of whether the rule of law exists sufficiently in Iraq to guarantee the citizens’ life and journalists, he pointed out that “there is no rule of law in Iraq, and law is not implemented unless it is in benefit of government and political parties.”⁹¹ Usually, the rule of law is necessary to stabilize justice in the country and keep equality between individuals of the society, but in Iraq “the citizens and journalists are the victim of unapplied law.”⁹² Al-Zawiti continued to mention the negative effects of a weak

⁸⁸ Ibid.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ Interview with AHMED Al-Zawiti, director of the office and correspondent of Al-Jazeera in Iraq, via email, December 20, 2011. See appendix II.

⁹² Ibid.

presence of the rule of law on the free press. He believed that in the continuous weakness of the rule of law “Iraq will remain in the bottom of the states that does not have transparency and will suffocate under the political and financial corruption.”⁹³ In his point of view this situation leads to the development of a journalist and journalism that works in interest of the government and will stop the professional journalism. Therefore, he states if the Iraqi government is willing to develop democracy, it should provide the press with freedom and protection.”⁹⁴ The overall view of both journalists is negative regarding the protection of journalists and media in Iraq under the current state of the rule of law. The government and political parties are above law and they are more powerful than the law. The law is not independent and the judges who are making decisions are not free to behave according to law. Both journalists agree the existence of a free and independent press in Iraq will promote democracy and civil society but the government should pave the way to its growth by strengthening and establishing the rule of law. Democracy exists when justice prevails in the country to protect all individuals equally and to help the government to be part of people and vice-versa. But in Iraq, the political intervention in judicial system has undermined rule of law and it has caused violation of rights, inequality and injustice.

⁹³ Ibid.

⁹⁴ Ibid.

CHAPTER FIVE

RECOMMENDATIONS

Generally, it is the duty of the governments to serve their people and provide them with equality and justice through an independent and an effective rule of law. But the consequence of this study shows us that in Iraq the government could not empower the basics of the rule of law. The rights of freedom of expression and press are restricted and civil society organizations are not supported to contribute in the promotion of democracy. Therefore, this situation will have a dreadful effect on the upcoming political, social, and economic life of the Iraqi society and the country as well, if the government does not take action to find a solution. For this purpose, in the following there are some recommendations that we hope become helpful for the improvement of the situation.

- 1- The Iraqi government should work for providing security and stability in the country.
- 2- The government should try for public reconciliation, a spirit of co-existence, and unification among Iraqi people.
- 3- The separation of political parties' power from the government's power is necessary to eliminate their domination of the government's institutions, and make the rule of law to decide for punishment of any political parties' interference in the government's affairs.
- 4- Political interference in courts must be prevented by passing the laws that support and empowers independence of the rule of law.
- 5- The Iraqi government should reform the courts by employing the independent and unbiased judges.
- 6- Give more opportunity to the freedom of press and journalists to cooperate the government in exposing weaknesses of officials in performance and corruption for the sake of reform.
- 7- The government should build relationships with people and listen to their concerns because democracy is meaningful when people can make choices and express what they want. Usually, the press can act as a focal point between people and the government.

- 8- The government should follow the recommendations made by ARTICLE 19 regarding amending and/or changing some articles of the Iraqi draft law for journalists' protection in order to improve in the situation of freedom of the press and journalists as well in Iraq.
- 9- Activating civil society organizations and supporting them financially. Assessing their activities and works for better improvement.
- 10- Giving independence to civil society organizations to engage democratic activities without political interference and have opportunity to check and monitor the policy of government and the use of power by officials.
- 11- Encouraging international non-government organizations (INGOs) to further contribute to awareness of Iraqi individuals through conducting training courses for publishing political, social, economic, educational and health awareness.
- 12- Alliance and cooperation between civil society organizations in Iraq to effectively contribute in solving specific issues, such as women and childhood rights, social education, health and more. Also, civil society organizations in coordination to each other can confront the restrictions and difficulties in a better way.
- 13- Tolerance among Iraqi leaders and political parties and peaceful transformation of power. Protection of human rights, toleration among ethnics and minorities in the country including the recognition of leaders and political parties to freedom of the press and public participation in political process.
- 14- The skill development of Iraqi citizens through their ability to gain information about the way of political system working which help them to make assessment to the policies of political parties, this will help the promotion of civic community.
- 15- The concentration of the government on the economic development and social welfare to decrease the high rate of unemployment and provide people with the opportunity of work, because democracy will not flourish in a fragile economy environment.

CONCLUSION

The study has defined that after 2003 the scope of freedom of expression in Iraq was expanded and huge number of media outlets revealed. But the unstable political situation, terrorism, and the sectarian conflict have left a negative impact on the condition of journalism and journalists in Iraq. The journalists are always facing intimidation, killing, and torture, because there is weak or no fundamental law to guarantee their safety of life and profession. Freedom of expression plays a vital role in promoting democracy and generating civic community, but Iraq could not achieve this aim, because the incentives are less than the obstacles. Nevertheless, the draft law aims to protect the goal of journalists but the professionals in relevant fields argue that the weaknesses and imperfection of its Articles could not guarantee their rights and profession. It discriminates between the journalists and ordinary people by providing journalists with priority. In addition, it reduces the meaning of the press in the definition of the Syndicate for Journalists that includes only those who are affiliated with the Syndicate. Therefore, the draft law is criticized by both the ARTICLE 19 Organization and many of the journalists and they think it requires amendment and/or changing some of its Articles.

The rule of law which is effective to create a state of law and protect the rights of all individuals equally is weak in Iraq. The judicial system is not independent to ensure the journalists reliance on it. The fragility of rule of the law is witnessed by the political interference which has not prevented the expansion of corruption and bad governance. Also rule of the law in Iraq could not secure journalists from threat and intimidation as more than 200 journalists were killed and as the research mentions. However, after 2007 journalists' deaths declined but still they are in danger.

We see, however, the Iraqi government since 2003 calls for democracy growing in the country but at the same time the free media encourages flourishing of the democratization process, which faces obstacles and difficulty in performance of its action. The free press exposes the corruption and inadequate performance among the government institutions which facilitate the government to conduct reform and improvement. But the Iraqi government has not taken this role seriously. Therefore, we see currently the country is suffering from lack of efficiency in the government along with the huge rate of corruption and this has produced a backward society educationally, economically, socially, and more. Eventually, in the circle of risk the Iraqi journalists could not perform their mission to successfully contribute to the promotion of civil society and pave the way to the involvement of the community in the political process. As a result, democracy which has become a model of governing in Iraq is in a delicate state of development because one of the key factors of democracy which is freedom of the press is not considered as a fourth pillar to foster the process of democratization.

APPENDIX I: Interview with Judit Neurink, director of independent media center in Kurdistan, correspondent for Dutch and Belgian media, author of three book of which two were translated to Kurdish language.⁹⁵

Question 1: How do you assess the condition of journalism in Iraq after 2003, with particular regard to freedom of expression, personal security, and professional recognition?

Journalists after 2003 are not playing the role they should play in a democracy. They are not working as the controlling power; they are not informing people and politics. That is because political groups and parties all have their own media, and they consider journalists of other media as the enemy. Press freedom is therefore limited to what the party bosses allow journalists to write. Taboo subjects are related to the enormous corruption (in Arabic Iraq far worse than in Iraqi Kurdistan), and to personal lives of politicians. And because of the animosity between politicians and journalists (of other parties and of the few independent media) attacks on journalists are common – the attacks are on the enemy. Problems in demonstrations are partly caused because journalists are with the demonstrators, and do not show they are just reporting, not taking part. Journalism in Iraq can be a dangerous job as attacks on journalists have been many – even on well known and respected journalists. Journalism in Iraq is not a job that is considered with respect, it is not a way to gain status. That is also why many journalists really behave as politicians, putting their opinion first - because that is where the status is.

Question 2: In 2011 Iraqi government adopted a draft law intended to protect journalists, but the ARTICLE 19 Organization considered it as imperfect. Do you think the draft law has secured journalists' rights effectively? If not, why? Or do journalists in Iraq still face problems? If yes why?

No law is good when it is not implemented. Journalists in Iraq are seen as part of the political system, and attacked as such. This problem will have to be solved first to ever guarantee journalists safety. We have to work hard on improving the quality of journalism, and that of politics in Iraq.

⁹⁵ Interview with Judit Neurink, director of independent media center in Kurdistan, correspondent for Dutch and Belgian media, author of three books of which two were translated to Kurdish language, December 14, 2011, via email, answers of the question are unedited.

Question 3: Do you believe that a free press has a crucial role in promoting the growth of civil society and fostering the development of democracy? How would you define those roles, and what do you believe journalists, citizens, and government should do to achieve them?

Well, you can see from my answers above: there can be no democracy without a responsible press. But democracy does not fall from the sky, people have to learn and internalize it. The same goes for responsible press that reports on what happens in the society, checking and rechecking, unbiased not intended to harm people. Journalists have to work to improve their act, but the same goes for the government, that should realize it needs a good and unbiased press to inform the people. In a democracy everything is about the people, and that is a different way of thinking than how both journalists and politicians think in Iraq. So instead of thinking that politicians are the most important, they have to realize they work for the people, to inform them, to improve their lives. And to give people the information needed to make a choice next time in the ballot box – instead of offering them presents to buy their vote.

Question 4: To what extent has the bad condition of journalists and weak civil society affected democratic development in Iraq?

See above: the press does not play its role as the controlling power. Still people are not important enough in Iraq.

Question 5: To what extent is the independent rule of law essential to protect the free press and how is the situation in Iraq?

Yes, we need independent judges to decide on mistakes made in the press. Now too often judges have connections with parties, and are influenced in their decisions. It makes feel media angry when they are fined. And also, even worse, it is becoming an honor to be punished by the courts, as it improves the status of journalists: they are really victims; they are punished for a wrong reason. That does not help to make them realize that they also do make mistakes and have to work in a more responsible and unbiased way. This is why I do not believe in free press. No press can be completely free – you have to abide by journalistic rules and rules of good behavior. I prefer to speak of independent and of responsible press.

APPENDIX II: Interview with Ahemd Al-Zawiti, director of the office and correspondent of Al-Jazzera in Iraq.

Via email, December 20, 2011

Translated from Arabic in to English by author

Question 1: Do you think that rule of the law exists sufficiently in Iraq, and guarantees the rights of citizens and journalists? If not, how?

Unfortunately, there is no rule of law in Iraq, nor does it apply only if the application is in favor of the authority or the strong political parties in the region. But citizens and independent journalists are the victim of not applying the law, and even the laws that have been formulated in defense of journalists, does not apply as their rights. Moreover, we have seen flagrant violations of the authority to relinquish to the rights of the journalists, without any regard to the law protect the journalists which issued by Syndicate of Journalists.

Question 2: What steps should the Iraqi government take to protect rights of journalists and to secure their profession under the law?

If the government is serious in the development of the Iraqi situation and coming out of what it is, then it requires providing the journalists and the press institutions with freedom. And formulate a special law for journalist protection and implement it which becomes a defender of the journalists and their professions.

Question 3: What are the negative effects of the weak presence of rule of law on the free press in Iraq?

Of course, there are many negatives, among them is, Iraq will continue to be at the bottom of the states that does not have transparency and suffocating in the political and financial corruption. This situation creates a bad environment for the press in which grows the press and journalists of the political power and will terminate the existence of professional journalism.

سؤال الأول: هل تعتقد أن سيادة القانون موجود بما فيه الكفاية في العراق ، ويضمن حقوق المواطنين والصحفيين؟ إذا لم يكن كذلك ، كيف؟

للأسف ليس هناك أي سيادة للقانون في العراق، ولا يطبق القانون إلا إذا كان تطبيقه في صالح السلطة أو الحزب القوي في المنطقة، أما المواطن المستقل والصحفي فهم ضحية عدم تطبيق القانون، حتى القوانين الخاصة بالعمل الصحفي والتي صيغت دفاعاً عن الصحفيين كما في كردستان العراق فهي لا تطبق بحق الصحفيين فطالما شاهدنا مخالفات فاضحة للسلطة بالتجاوز على حقوق الصحفيين دون أي اعتبار لقانون الدفاع عن الصحفيين الصادر من نقابة الصحفيين.

سؤال الثاني: ما هي الخطوات التي ينبغي على الحكومة العراقية القيام بها لحماية حقوق الصحفيين وتأمين مهنتهم بموجب القانون؟

إذا كانت الحكومة العراقية جادة في التطور بالوضع العراقي وخروجه مما هو عليه، فهذا يتطلب إعطاء الحرية للصحفيين والمؤسسات الصحفية، وأن تصاغ قانون خاصة بحماية الصحفيين وتطبيقه، وتكون هي قبل أي جهة أخرى المدافعة عن الصحفيين وأعمل الصحفي.

سؤال الثالث: ما هي الآثار السلبية المترتبة على وجود ضعف سيادة القانون على حرية الصحافة في العراق؟

طبعاً الآثار السلبية كثيرة منها سيستمر العراق في ذيل الدول التي ليست فيها الشفافية وتختنق تحت الفساد السياسي والمالي، وسيصنع هذا بيئة صحفية سيئة سينمو فيها الصحفي والصحافة التابعة للسلطة والمعرضة على الآخرين، وستندم فيها الصحافة المهنية.

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